

BYRON R. MEYER

IBLA 84-919

Decided October 28, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing protest challenging appraisal of land in proposed sale. CA-15341.

Set aside and remanded.

1. Appraisals--Federal Land Policy and Management Act of 1976: Sales

Where the designated bidder in a proposed sale pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), shows significant discrepancies between the method of appraisal and the appraisal standards adopted by the Department regarding consideration of highest and best use and seller financing in analyzing comparable transactions, the case may be remanded to BLM for a reevaluation of the fair market value of the land.

APPEARANCES: Byron R. Meyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Byron R. Meyer has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 29, 1984, dismissing his protest challenging the appraisal of a parcel of land (parcel 5) to be offered in a proposed sale, CA-15341, pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1982).

On May 30, 1984, BLM published a notice of realty action in the Federal Register, giving notice that parcel 5, described as 40 acres of land situated in the SW 1/4 SW 1/4 sec. 32, T. 8 N., R. 6 W., Mount Diablo Meridian, Sonoma County, California, would be offered for sale on August 29, 1984, "at no less than the appraised fair market value," through modified competitive bidding. 49 FR 22547 (May 30, 1984). The notice further stated that "[a]ll mineral rights will be reserved to the United States" and that a successful bidder "may apply to purchase" these mineral rights under section 209 of FLPMA, 43 U.S.C. § 1719 (1982). 1/ Appellant is the designated bidder with respect

1/ In a Mineral Development Potential and Surface Interference Report for parcel No. 5, dated June 20, 1984, BLM stated that the parcel has no known

to parcel 5, who, under the terms of the proposed sale, has the right to meet the highest bid for that parcel. By letter dated June 5, 1984, appellant informed BLM of his "interest" in purchasing parcel 5.

Parcel 5 is described in a Land Report, dated April 4, 1984, as straddling an intermittent drainage and having steep slopes ranging from 50 to 100 percent, unstable soils, no encumbrances or improvements, a mixed evergreen and chaparral plant community, and no access except by foot. The parcel is bordered on the south by public land and on the remaining sides by private land owned by appellant.

On May 17, 1984, a BLM staff appraiser prepared an appraisal report for parcel 5, which was approved by the State appraiser on May 19, 1984, and the District Manager, Ukiah District, on June 7, 1984. The report identified the highest and best use of the parcel as "assemblage," and used the comparable sales method of appraisal, considering the factors of size, location, and access to arrive at a value for the property. The report relied on three land sales in the vicinity of the parcel. All of the sale tracts, like parcel 5, are described as mountainous, with class 6 soils, trees, and brush. Comparative sale No. 1 involved a 40-acre parcel of land, which sold in April 1980 for \$1,838 per acre. This tract was considered to be superior to parcel 5 because of the existence of access via a dirt road. Sale No. 2 involved a 363-acre parcel of land purchased by appellant in June 1980 for a reported price of \$1,242 per acre. This tract was considered to be equal (in value per acre) to parcel 5 because the "much larger size of the sale offsets the lack of access of the subject, and [further] had the sale property included the subject when it was purchased the price per acre would not have been any different." (Emphasis in original.) Sale No. 3 was a 165-acre parcel of land, which sold in May 1981 for \$692 per acre. Sale No. 3 is immediately adjacent to sale No. 2 and one-eighth of a mile from parcel 5. This parcel was considered to be inferior to parcel 5 (in value per acre) because of its larger size. The report stated that: "Even though this sale occurred later there had been no decline in land values." The report concluded that the fair market value of parcel 5 is \$52,000 (\$1,300 per acre). 2/

On July 11, 1984, appellant filed a protest challenging the fair market value appraisal of parcel 5. Appellant contended that the appraised value was "far too high." Appellant noted an error in both the amount of acreage

fn. 1 (continued)

potential for locatable and salable minerals, but "low development potential for geothermal [resources]." In an amendment of the notice of realty action, BLM stated that the minerals reserved to the United States in connection with CA-15341 would be "[g]eothermal" resources. 49 FR 28771 (July 16, 1984). 2/ An earlier appraisal report appearing in the record and approved by the Chief State appraiser on Mar. 15, 1984, concluded that the fair market value of parcel 5 was \$23,600 (\$590 per acre). This conclusion was apparently based on a finding that the value was comparable to sale No. 3 with a discount to reflect the requirement to pay cash (sale No. 3 involved a cash payment of less than one-third down with the balance financed).

in comparable sale No. 2 and the amount of the purchase price shown in the BLM appraisal report. As the purchase price was substantially lower than that previously reported by BLM and the acreage was substantially higher, the price per acre was significantly reduced to \$894 per acre. In addition, appellant stated the sales terms for comparable sale No. 2 provided for a \$60,000 cash downpayment with the remainder financed by the seller with interest payable at a 10 percent annual rate. Appellant stated that he paid a "premium price" for that parcel because of the "favorable" sale terms. Appellant also noted that the land he purchased has "many buildable sites with spectacular views * * * year-round roadway access." In contrast, appellant noted that parcel 5 is inaccessible, consists of a small steep hill, and is subject to a reservation of the geothermal rights.

On July 16, 1984, a BLM staff appraiser prepared an addendum to the May 1984 appraisal report, which was approved by the State appraiser on that date, taking into account the new information submitted by appellant regarding sale No. 2. The addendum reappraised parcel 5 at \$38,000 (\$950 per acre). ^{3/}

In its August 1984 decision, BLM stated that the State appraiser had "dropped" the appraised value of parcel 5 from \$52,000 to \$38,000 "primarily due to your sale verification" and that this represents the "true value" of the parcel. BLM, otherwise, dismissed appellant's protest.

In his statement of reasons for appeal, appellant contends that the appraised value of \$950 per acre for parcel 5 does not represent its fair market value, essentially reiterating the arguments made in his protest. Appellant states that parcel 5 is "extremely hilly, rendering it virtually unbuildable" and that the potential for future development of the retained geothermal rights "further devalue[s]" the property.

[1] Section 203(d) of FLPMA, 43 U.S.C. § 1713(d) (1982), provides that sales of public lands "shall be made at a price not less than their fair market value as determined by the Secretary." Fair market value is defined as the "amount in cash, or in terms reasonably equivalent to cash," for which a willing owner would sell land to a willing buyer. See Cole Industries, Inc., 82 IBLA 289, 293 n.6 (1984), quoting from Full Circle, Inc., 35 IBLA 325, 333, 85 I.D. 207, 211 (1978). In addition, BLM appraisals are generally governed by the principles enunciated in the Interagency Land Acquisition Conference publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions" (hereafter referred to as UAS). See Paul Kellerblock, 38 IBLA 160 (1978).

The comparable sales approach, consisting of analysis of sales of land in the vicinity of the tract under appraisal, offers the "best evidence of market value." UAS at 9. Among the elements to be considered in comparison

^{3/} The reappraised value of parcel 5 was based on the revised price and acreage figures for Sale No. 2, as adjusted for the effect of inflation since June 1980 on the sale price.

of sales transactions to the subject property is the "similarity of highest and best use." Id. Highest and best use is defined to mean "either some existing use on the date of taking, or one which the evidence shows was so reasonably likely in the near future that the availability of the property for that use would have affected its market price * * * and would have been taken into account by a purchaser under fair market conditions." UAS at 7; see American Telephone & Telegraph Co., 25 IBLA 341 (1976). The BLM appraisal reflects that the highest and best use of the subject tract is "assemblage." The appraisal report does not discuss the highest and best use for the comparable tracts, noting under the category of "use" for comparables 1 and 2 the term "idle" and for comparable 3 the term "unknown." Appellant, however, asserts (with some specificity) a discrepancy between the highest and best use for comparable 2 which he owns and the subject parcel. Appellant avers his adjacent land (comparable 2) contains several parcels with buildable sites and access but that parcel 5 is unbuildable and without access. The record offers some support for this allegation. A letter commenting on parcel 5, dated December 20, 1983, from the Sonoma County Department of Planning to BLM advised of the presence of soils too shallow to allow approval of installation of septic systems. Thus, the record fails to reflect careful analysis of the highest and best use of the subject parcel and comparable tracts.

Further, the appraisal report fails to analyze the effect on value of the necessity to pay cash at the BLM sale. Appellant has indicated that when purchasing the tract designated as comparable 2 he paid \$60,000 in cash with the seller financing the balance of \$265,000. The UAS cautions against use of "sales with unreasonably generous financing terms provided by the seller" for comparison purposes unless "proper adjustments" are made. UAS at 10. The record does not indicate any adjustment in the revised appraisal to reflect the difference between cash terms and seller financing. ^{4/}

The general standard for reviewing appraisals is to uphold the appraisal if there is no error shown in the appraisal methods used by BLM and the appellant fails to show by convincing evidence that the appraised value is excessive. Clinton Impson, 83 IBLA 72 (1984). In this case, sufficient deviation from approved appraisal methods has been shown to warrant setting aside the decision and remanding the case for further evaluation of the fair market value for parcel 5.

Appellant has not presented any evidence as to the effect of the reservation of geothermal resources on the value of parcel 5. An appraisal will not be set aside on the mere allegation of error in valuation in the absence of substantial evidence of error and we would not remand the case on this basis alone. However, since remand is otherwise necessary, it is appropriate for BLM to consider on remand the effect, if any, of the reservation on the value of parcel 5.

^{4/} This may be contrasted with the earlier appraisal of Mar. 15, 1984, which did reflect such an adjustment. See note 2, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

